

Message Text

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FM AMEMBASSY LAGOS

TO SECSTATE WASHDC IMMEDIATE 9364

UNCLAS LAGOS 04681

E.O. 11652 : NA

TAGS : AFSP, OGEN

SUBJ : REQUEST FOR WAIVER OF DIPLOMATIC IMMUNITY

REF: A. STATE 115864; B. LAGOS 4555

1. IN MARCH AND MAY, 1974 EMBASSY NEGOTIATED AND SIGNED LEASES FOR TWO MULTIPLE OCCUPANCY PROPERTIES, PLANNED FOR CONSTRUCTION, WHICH WERE TO BE COMPLETED TO COINCIDE WITH DATES ON WHICH EMBASSY WAS TO RELINGUISH EXISTING PROPERTY TO THE KANO AND KWARA STATE GOVERNMENTS.

2. AGREEMENT STIPULATED THAT LEASES WERE FOR PERIODS OF FIVE YEARS, WITH RENTS PAYABLE ANNUALLY IN ADVANCE, TO COMMENCE ON DATE EMBASSY ACCEPTS THEM FOR OCCUPANCY.

3. EMBASSY BROUGHT PROPERTY OWNERS TOGETHER WITH REPRESENTATIVES OF AMERICAN INTERNATIONAL INSURANCE CO. (NIGERIA) TO ARRANGE FINANCING SECURED BY EMBASSY LEASE.

4. CONSTRUCTION OF BOTH PROPERTIES IS IN FINANAL STAGES AND EMBASSY HAD ANTICIPATED OCCUPANCY ON OR ABOUT JULY 1, 1975. HOWEVER, DURING PERIOD SINCE LEASES WERE ORIGINALLY NEGOTIATED HOUSING SHORTAGE HAS BECOME MORE ACUTE AND RENTS HAVE MORE THAN DOUBLED. LAND-LORDS REALIZE THAT ON CURRENT MARKET THEY CAN DEMAND HIGHER RENTS, PAYABLE FIVE YEARS IN ADVANCE AND THEREFORE NEED NEITHER THE EMBASSY NOR AII FINANCING AND ARE ATTEMPTING TO DECLARE THE LEASES INVALID.

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5. IN THE PAST ALL ATTEMPTS TO OBTAIN ASSISTANCE ON SUCH MATTERS THROUGH THE MINISTRY OF EXTERNAL AFFAIRS HAVE PROVED FRUITLESS. EMBASSY NOW FEELS THAT PRESENT LANDLORDS ARE ENCOURAGED BY OUR PAST REPUTATION FOR ACQUIESCENCE AND THAT IF THEY ARE SUCCESSFUL IN BREAKING SOLID LEASES IN FAVOR OF HIGHER RENTALS THE EMBASSY IS FAIR GAME FOR SIMILAR ACTION BY OTHER LANDLORDS.

6. EMBASSY HAS BEEN INFORMED THAT LANDLORDS ARE CURRENTLY IN PROCESS OF NEGOTIATING WITH OTHER PROSPECTIVE TENANTS WITHOUT DUE REGARD TO EXISTING AGREEMENTS, AND IN ONE INSTANCE LANDLORD HAS ALREADY ACCEPTED FIVE YEARS ADVANCE RENTAL PAYMENT.

7. EMBASSY RECOMMENDS ENGAGING LOCAL ATTORNEY ACCORDANCE 2 FAM 283.2 TO PREPARE AND FILE PRELIMINARY INJUNCTION IN EFFORT TO BRING LANDLORDS TO ABANDON PRESENT COURSE. IF THIS IS UNSUCCESSFUL, EMBASSY MUST BE PREPARED BY WAIVER TO PURSUE THE MATTER EXPEDITIOUSLY IN ORDER TO BLOCK OCCUPANCY BY OTHER TENANTS.

8. SINCE LEASE AGREEMENT, REGISTERED WITH FMG, STANDS ON ITS OWN MERIT IT IS QUITE POSSIBLE LOCAL ATTORNEY COULD HANDLE MATTER WITHOUT TESTIMONY BY EMBASSY OFFICERS. HOWEVER, WAIVER COULD BE REQUIRED FOR CONTRACTING OFFICER, ADMIN COUNSELOR AND POSSIBLY DCM TO BEAR WITNESS TO SIGNING OF THE CONTRACTS, ATTEST TO SIGNATURES, AND WITNESS TO INSTALLATION OF EMBASSY-SUPPLIES EQUIPMENT IN AND ON PROPERTIES IN QUESTION DURING COURSE OF BUILDING CONSTRUCTION.

9. IT IS URGED THAT THE DEPARTMENT CONSIDER THE CONSEQUENCES OF INACTION AND GRANT IMMEDIATE AUTHORIZATION TO DEFEND THE EMBASSY'S RIGHTS IN THIS MATTER. IF WE CANNOT RETAIN PROPERTIES, WE WILL BE FORCED REASSESS THE SIZE OF THE MISSION IN VIEW PERSONNEL HOUSING REQUIREMENTS AND CURRENT COST.
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